IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 4624 of 2003
Date of decision: 28.8.2007

Sangita Lakhanpal and another ...Petitioners

Versus

B.S.N.L. and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE S. N. AGGARWAL

Present: Mr. Ranjan Lakhanpal, Advocate,
for the petitioners.

Mr. Madan Mohan, Advocate, for
the respondents.

K.S.GAREWAL, J.

Sangita Lakhanpal and Ashok Kumar Handa have filed this petition seeking relaxation for recruitment to post of JTOs in Bharat Sanchar Nigam Limited (BSNL). The petitioners joined the Telecom Department in 1981 and 1979, respectively, as Telephone Operating Assistants. They were promoted as TOA (G) in 1994. In 2003 they were working as Senior TOA (G). However, at the relevant time, the petitioners were employees of Telecom Department (which is now merged with BSNL).

The Telecom Department circulated 71 vacancies of JTOs cadre against the departmental quota relating to 1995, 1996, 1997 and 1998. The petitioners appeared in the departmental examination. Out of 71

candidates 9 candidates were declared successful while 62 vacancies remained unfilled. The petitioners could not qualify as they did not score 40% marks in each subject. In an earlier examination held in 1996, the department had relaxed the qualification standard from 40% to 30% for candidates belonging to open category. The petitioners claimed the same relaxation and alongwith five others had filed an application before the Central Administrative Tribunal seeking relaxation but the application was dismissed. The petitioners filed CWP 16715 of 2002 in this Court against the dismissal of their application by the CAT. The said writ petition was also dismissed, vide order dated October 18, 2002 holding that the relaxation given in 1996 was only one time measure and could not be repeated again in 1999.

Since the posts remained unfilled, the examination was again conducted in 2000 but the petitioners did not compete. However, relaxation similar to the one given in 1996 was also given to the candidates who appeared in 2000. The grievance of the petitioners is that the candidates who appeared in 1996 and 2000 managed to get promotion by obtaining aggregate marks of 30% whereas those who appeared in 1999 and who had secured more than 40% marks in the aggregate were left out from the zone of consideration. Reference was also made to Circular dated March 10, 2003 issued by the BSNL notifying that requirement of minimum aggregate marks in the subjects would be 30% for open category candidates and this relaxation would be applied to either of the two examinations, 1990 or 2000, whichever was later. The relaxation of qualifying marks would not apply to both examinations.

In the present case, the petitioners appeared in 1999 but not in

2000. According to the relaxation provided in 2003, 30% pass marks would only be for the later of the two examinations but not for both. The examination conducted in 1999 had been specifically excluded when relaxation was granted for the examination conducted in 2000.

According to the petitioners this was a case of blatant discrimination between examinees who appeared in 1999 who were denied the benefit of lower pass percentage and the examinees who appeared in 2000 who had got the said benefits.

Relaxation of marks is not a right of a candidate but a concession which is granted by the examiners. This concession can be given for a variety of reasons, like the need to induct more officers when the examination results shows that very few officers have made a grade. Relaxation can also be granted where the examiner feels that the standard of the examination was too high and therefore a large number of candidates were unable to make grade. Whatever may be the reason it is obvious that the fixation of the pass percentage is a subjective matter entirely a question of departmental discretion. It is not a matter of right which the petitioners can claim. Therefore, the petitioners cannot complaint of any discrimination.

We find no merit in this case. Dismissed.

(K.S. GAREWAL)
JUDGE

28.8.2007 **(S. N. AGGARWAL)**
prem **JUDGE**